

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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BELVEDERE CONSTRUCTION, L.L.C.,

Plaintiff-Counter-Defendant-  
Appellant,

v

RENEE ZACHARY and ANDRE SMITH,

Defendants-Counter-Plaintiffs-  
Appellees.

UNPUBLISHED  
September 4, 2003

No. 239907  
Oakland Circuit Court  
LC No. 00-026625-CK

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Before: Markey, P.J., and Cavanagh and Saad, JJ.

MEMORANDUM.

Plaintiff appeals by right the order granting defendants' motion for costs and fees because plaintiff's complaint was deemed frivolous. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The parties entered into a home improvement installment contract, which plaintiff assigned to Franklin Bank. After plaintiff filed a completion certificate, the bank paid the balance of the contract. When defendants failed to make payments to the bank on the contract, plaintiff filed a lien and brought this action. After determining that plaintiff had been paid the contract amount and had a legal obligation to make defendants' payments to the bank, the trial court granted defendants' summary disposition, found the action to be frivolous, and granted defendants' motion for costs and attorney fees.

A trial court's finding that an action is frivolous is reviewed for clear error. *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002). Whether a claim is frivolous within the meaning of MCR 2.114(F) and MCL 600.2591 depends on the facts of the case. *Id.*, 662. MCL 600.2591(3) defines frivolous:

(a) "Frivolous" means that at least 1 of the following conditions is met:

(i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.

(ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.

(iii) The party's legal position was devoid of arguable legal merit.

Plaintiff has not identified any legal basis for filing a lien on defendants' property. Plaintiff was paid for its services, and defendants' obligation was to pay the bank. Plaintiff failed to produce evidence showing that it was legally obligated to redeem the contract if defendants failed to make payments. The only condition warranting an obligation to redeem the contract was a breach of warranty on the part of plaintiff, not defendants. There was no legal basis for plaintiff's action, so the trial court properly awarded fees and costs for the frivolous claim.

We affirm.

/s/ Jane E. Markey  
/s/ Mark J. Cavanagh  
/s/ Henry William Saad